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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1984

Addendum

BULGARIA*

[25 January 1993]

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* For the initial report submitted by the Government of Bulgaria, see document CCPR/C/1/Add.30; for its consideration by the Committee, see CCPR/C/SR.131 to 133 and Official Records of the General Assembly, thirty-fourth session, Supplement No. 40 (A/34/40), paragraphs 110-146.

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INTRODUCTION

1. Pursuant to article 40 of the International Covenant on Civil and Political Rights, the Government of the Republic of Bulgaria is hereby presenting its consolidated second and third periodic reports on measures to guarantee the rights recognized by the Covenant and on the progress in exercising these rights. This report is a follow-up of Bulgaria's initial report submitted in 1978 (CCPR/C/1/Add.30).

2. The pace and depth of the changes under way in Bulgaria are making it more difficult to provide up-to-date information on most issues related to the provisions of the Covenant. Thus, in this report updated information on legislation and practice in Bulgaria is given for the period ending June 1992.

Part I. GENERAL

3. Certain additional explanations regarding the general political structure in the country are needed in view of the radical changes in all spheres of public and political life which have been under way in Bulgaria over the last several years.

4. The period of time until 10 November 1989, when the totalitarian regime was brought down, was characterized by reduced opportunities for citizens to practise in full their civil and political rights; by the rejection and suppression of such basic democratic principles as the division of powers, political pluralism, the regular holding of free elections etc.; the granting of privileges to certain individuals or small groups of the population; manipulation of the Bulgarian citizens' political will; discriminatory treatment of entire ethnic groups; a negative attitude to religion on the part of the authorities etc.

5. Since November 1989 Bulgaria has given new direction to its domestic and foreign policy. Currently the totalitarian laws containing provisions that restrict civil rights are being amended or altogether revoked and new democratic legislation is being adopted. Thus, article 11 of the new Constitution guarantees the principle of political pluralism, while the principle of the division of power has become a founding norm in the structure of government (art. 8 of the Constitution).

6. There is no separate law or charter on human rights in the Republic of Bulgaria. The basic document regulating the issue of rights and fundamental freedoms is the Constitution of 1991, the second chapter of which, "Fundamental Rights and Obligations on Citizens", follows the logic and methodology of the Covenant and in many cases quotes verbatim its texts. The Constitution itself set a three-year term during which the National Assembly must adopt certain laws, many of which have a direct bearing on human rights. That will generally mark the completion of the overhaul of Bulgarian legislation to make it compatible with the international standards.

7. The human rights provisions of the Constitution are directly enforceable, which means that they are in full force and may be applied even without the adoption of any particular legislation. At the same time human rights issues are regulated and made more specific by legal acts of a material or procedural nature.

8. As far as the status of the International Covenant on Civil and Political Rights in the structure of national legislation is concerned, before 1991, under the Constitution of 1971, the provisions of the international instruments to which Bulgaria was party were implemented indirectly by the adoption of corresponding national legislation. Under article 5, paragraph 4, of the new Constitution (1991), "Any international instruments which have been ratified by the constitutionally established procedure, promulgated and come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise". A duly empowered body, the Chief Prosecutor's Office, requested from the Constitutional Court interpretation regarding the legal force and action of the international agreements adopted and ratified by the Republic of Bulgaria in respect to domestic law.

9. There does not exist a special institution or body (including a judicial one) in Bulgaria to monitor the observance of human rights. That is the constitutional duty both of the judicial and of other national and local state bodies and institutions. A number of national non-governmental organizations were registered in Bulgaria lately which are concerned with promoting and protecting human rights and fundamental freedoms.

10. An important component of the national legal protection system is the judiciary which, under article 117 of the Constitution, should protect the rights and legitimate interests of citizens. This obligation is repeated in the legislation on the courts of law and the prosecutors' offices. The said obligation is common to all institutions of the judiciary within the framework of their competence.

11. The protection of citizens' rights is done ex officio by the judicial authorities without the need for a claim from a plaintiff. In respect to certain violations, the judicial procedure requires that the parties concerned bring them to the attention of the judicial authorities. Both types of cases are pointed out in the law. In general, with penal law official interference is predominant, while in civil law a citizen's claim would be necessary. Regardless of the fact that State bodies are obliged to act ex officio in order to protect citizens against violations of their rights, every citizen who believes that his or her rights have been violated may request the intervention of a competent State body. In the event that such request is addressed incorrectly, it is forwarded by official channels to the respective competent institution. Generally, every decision of a State body may be subject to appeal before a hierarchically higher authority. This holds true for the judicial authorities as well. If citizens are not satisfied with the decision of the body to which they had brought their appeal, they may appeal that decision.

12. Special jurisdictions have been established for the protection of certain rights. For example, labour disputes may be resolved both in the courts and by labour dispute commissions. The decisions of the latter do not exclude appeals addressed to the courts of law.

13. The new Constitution of the Republic of Bulgaria established a Supreme Administrative Court which supervises administrative jurisdiction.

14. The Constitutional Court, which is a new institution established in 1991 and operating outside the judicial system, also has certain human rights protection functions. The main function of this institution is to provide mandatory interpretations of the Constitution and to rule on queries concerning the constitutionality of the acts of the National Assembly. It is only natural that such broadly formulated competence would include the question of whether the said legal acts meet the human rights requirements contained in the Constitution. The Constitutional Court also rules on the Constitution's compatibility with international instruments concluded but as yet unratified by the Republic of Bulgaria, as well as on whether the laws of the country are compatible with the generally accepted norms of international law and with the international instruments to which Bulgaria is party. This function in fact turns the Constitutional Court into one of the guarantees of the fulfilment of the obligations accepted by Bulgaria with its accession to the international human rights instruments.

15. Citizens whose rights are or have been violated may demand the halting of such violations, restoration of violated rights and monetary or moral compensation. The type of compensation is determined in view of the nature of the violation, its duration, whether it would be possible to restore the rights, and other circumstances.

Part II. INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

PART II

Article 1

16. According to article 1 of the Constitution of 1991:

> "(1) Bulgaria shall be a republic with a parliamentary form of government.
>
> "(2) The entire power of state shall derive from the people. The people shall exercise this power directly and through the bodies established by the Constitution.
>
> "(3) No part of the people, no political party nor any other organization, state institution or individual shall usurp the expression of the popular sovereignty."

According to article 10, "All elections, and national and local referendums shall be held on the basis of universal, equal and direct suffrage by secret ballot".

17. Under the new Constitution, legislative power in Bulgaria is exercised by a parliament consisting of one chamber, called the National Assembly. The 240 members of that parliament are elected at general, equal and direct elections by secret ballot for a four-year mandate. Under article 86, paragraph 2, of the Election of Members of Parliament, Municipal Councillors and Mayors Act, political parties and coalitions may obtain seats in the National Assembly if they receive more than 4 per cent of the actual valid votes. Thirty-eight political parties and 19 independent candidates stood for election at the general elections held on 13 October 1991. However, just three of them managed to pass beyond the 4 per cent barrier: the Union of Democratic Forces - 45.8 per cent and 110 seats; Election Coalition of the Bulgarian Socialist Party - 44.2 per cent and 106 seats; and the Rights and Freedoms Movement - 10.0 per cent and 24 seats. Parliament has at its disposal very broad powers, including those concerning the ratification of the international instruments referred to in the Constitution. These include the instruments relating to basic human rights (art. 85, para. 1, item 6, of the Constitution).

18. The President and the Council of Ministers are the supreme executive authorities. The President is the head of State and is elected directly for a five-year term. A representative nominated by the largest parliamentary group forms the cabinet upon the request of the President. The Prime Minister and the Cabinet nominated by him are then elected by a parliamentary vote of confidence or no confidence. Municipal councils and the mayors constitute the local self-government authorities. They are elected by the residents of their municipalities for a period of four years.

19. The judiciary power is exercised by the Court, prosecutors and investigating authorities.

20. Each of the three branches (legislative, executive and judicial) is independent of the others and relations between them are functional.

21. The country's economic development is based on the principle of free economic initiative, and the State establishes and guarantees the necessary legal conditions for the economic activity of the citizens and for protecting consumers from abuse by monopolies and unfair competition (art. 19 of the Constitution).

22. Bulgaria recognizes and respects nations' rights to self-determination and their right to freely determine their political status and freely pursue their economic, social and cultural development. The Bulgarian Government has expressed its attitude to that right in a most unequivocal manner: Bulgaria was one of the first States to recognize the independence of the Baltic republics and other republics of the former Soviet Union, as well as the newly established republics in Yugoslavia. Bulgaria avoids interfering in other countries' internal affairs. Within its powers and in conformity with the Charter of the United Nations and internationally recognized norms, Bulgaria is encouraging the nations' right to self-determination, including every people's right to retain in its possession its natural wealth. This principle also enjoys constitutional protection in respect to the Republic of Bulgaria.

Article 2

23. Respect for and guaranteeing of the rights of every individual on Bulgarian territory and within the jurisdiction of the Republic of Bulgaria is a basic constitutional principle. Article 6 of the Constitution proclaims that all citizens are equal before the law and that rights may not be curtailed and privileges may not be granted because of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal and social status or property status.

24. The attitude of Bulgaria to the International Covenant on Civil and Political Rights was demonstrated by the elaboration and adoption by the Grand National Assembly of the new Constitution of 1991, whose second chapter is entitled "Fundamental Rights and Obligations of Citizens" and follows strictly the logic and system of the provisions of the Covenant.

25. The constitutional provision on respect for and protection of citizens' rights is made more specific and is practically applied in the laws and other legal acts, in the actions of the official authorities and in the behaviour of citizens. It is worth recalling that according to article 5 of the Constitution, its provisions have direct action and may be applied without the mediation of laws, while international agreements, at the time of being ratified and promulgated, become part of the country's domestic law and are incorporated in the Bulgarian legal system. They receive priority over such norms of domestic law that may contravene them. Thus, under the principle of the hierarchy of legal acts, a law or other legal acts that contravenes the Constitution or an international instrument to which Bulgaria is party has no legal force and is subject to revocation.

26. In this connection, as mentioned in paragraph 14 above, the Constitutional Court has certain functions pertaining to the protection of human rights in Bulgaria. Thus, in implementing its function of providing rulings upon request on the constitutionality of laws and other legal acts adopted by the National Assembly, in 1992 the Constitutional Court determined that certain provisions of recently adopted laws were unconstitutional and contravened international instruments to which Bulgaria is party.

27. Both the constitutional provisions on human rights and Bulgaria's ratification of the International Covenant on Civil and Political Rights and other international instruments in the social and humanitarian field are factors which largely encourage respect for human rights. Regardless of that, legal acts which restrict civil rights are currently being amended or revoked. These changes in Bulgarian legislation stem from the need to achieve greater compatibility with the international human rights standards. Examples proving the point are the revocation in 1990 of restrictions on obtaining residential status in the capital and in other major Bulgarian cities; the Meetings, Rallies and Demonstrations Act of the same year, which lifted the restrictions on public gatherings; and a decree of the Council of Ministers revoking other decrees granting privileges.

28. In respect to foreign nationals staying in Bulgaria (under the Stay of Foreigners in Bulgaria Act of 1972, amended in 1979, 1987, 1988 and 1989, a foreign national is an individual who is not a Bulgarian citizen, but is a

citizen of another country or has no citizenship), a special text in the Constitution (art. 26, para. 2) provides that such persons shall be vested with all rights and obligations under the Constitution except those rights and obligations for which Bulgarian citizenship is required by the Constitution or by another law (such as the right to elect and to be elected to representative State bodies). It should be noted, however, that national legislation and practice do not as yet fully conform to the requirements of the Covenant.

29. It should be noted in general that while from a legal point of view the problems of protecting human rights have been resolved in a satisfactory manner as far as the International Covenant on Civil and Political Rights is concerned, there do exist shortcomings and violations in the process of the practical implementation of the legal provisions, as well as in the day-to-day interaction between authorities and citizens and among the citizens themselves. The implementation of court rulings on restoring violated rights does not pose problems. A firm legal regulation supported by sanctions guarantees the implementation of such rulings. Problems arise, however, in conducting protective measures outside the courts of law.

30. There are different ways and methods of restoring violated rights and freedoms of citizens as they are recognized by the Covenant. Both the supreme and the lower-ranking State authorities have such functions. Certain public organizations have monitoring functions in that field.

31. The most broadly used and most efficient method of protecting human rights is through a court of law. There are no restrictions in Bulgarian law for citizens seeking legal protection of their rights. Every citizen may start legal action to restore his or her violated rights or in order to determine the existence or non-existence of a right which is of interest to him or her (art. 97 of the Code of Civil Procedure). Those committing violations of rights which do not constitute crimes are subject to civil, administrative or disciplinary liability.

32. Severe civil rights violations are crimes under the Penal Code. Penalties are duly provided for such violations and the protection against them is carried out ex officio. For less dangerous crimes penal action may be taken on the grounds of a claim filed by the individual whose rights have been violated, as in cases of slander, insult, light injury etc.

33. Bulgaria's leading jurists share the view that the protection of human rights through criminal law needs a more comprehensive and more concrete regulation on the basis of the new Constitution by providing for better and more effective protection of each of the rights proclaimed by the Constitution. The new Penal Code, which is currently being elaborated, is expected to address that issue.

34. The current legal system in Bulgaria does not provide for an administrative court, and disputes of an administrative nature are resolved by administrative institutions or in court. Article 125 of the new Constitution provides for the establishment of a Supreme Administrative Court to exercise

judicial oversight as to the precise and equal application of the law in administrative justice and to rule on the legality of acts of the Council of Ministers and the individual ministries, and of all other acts specific by law.

35. The prosecutors' offices also possess special functions in the human rights sphere. One of their duties, according to article 2 of the Prosecutor's Office Act is the protection of citizens' rights and legitimate interests. This function is implemented by exercising oversight as to legality, the prosecution of offenders, and the adoption of measures for revoking illegal acts and restoring violated rights. The Prosecutor's Office exercises its power not only over Bulgarian nationals but also over all who are inside the sphere of its functions.

36. The Liability of State for Harm to Citizens Act came into force on 1 January 1989. It regulates liability for harm caused by illegal acts, by action or inaction of State bodies and officials, resulting from administrative action. This would include liability for harm caused by illegal action on the part of investigating authorities, prosecutors' offices, courts and special jurisdictions. Certain acts of parliament (such as the Amnesty and Restoration of Confiscated Property Act, the Restoration of Property Rights over Nationalized Assets Act, the Act on Restoration of Property Rights over Certain Real Estate Procured by the State under the Territorial and Territorial Development Act, the Planned Development Act, the Urban Development Act, the State Properties Act and the Property Act, the Restoration of Property Rights over Certain Retail Outlets, Warehouses and Workshops Act, the Law on Restoration of Property Rights over Real Estate of Bulgarian Nationals who Applied for Travel to the Republic of Turkey and other Countries Between May and September 1989), restored the rights of citizens which had been violated in the implementation of legal provisions at the time of the totalitarian regime or as a result of abuse of power by officials and Communist Party functionaries.

37. Bulgaria's accession to the Optional Protocol to the International Covenant on Civil and Political Rights and to the European Convention on Human Rights opens new paths for restoring citizens' rights in the event that the national means for legal protection have been exhausted or have proved inefficient. The country has seen the start of the legal procedure necessary for recognizing the competence of the Committee on the Elimination of Racial Discrimination and the Committee against Torture to receive and examine communications by individuals or groups of people who claim that they are subject to violations of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. Apart from the State bodies, there are also public organizations in Bulgaria whose activities are directed at the general protection of human rights or the protection of specific categories of rights. Since 1989, given the legally guaranteed political pluralism and freedom of the press, the media plays an increasingly important role in encouraging and protecting human rights.

Article 3

39. In 1991 Bulgaria's population amounted to 8,974,861, of whom 4,552,749 were women and 4,422,112 were men. The equality of man and woman is a constitutional principle under article 6 of the Constitution. There are no restrictions of rights based on sex; no social spheres have been reserved for men or women only. The two sexes enjoy equal civil and political rights. There are even spheres once dominated by men where nowadays women outnumber men (the courts, prosecutors' offices, education, etc.). The Vice-President of the Republic of Bulgaria is a women as is the Minister of Culture. Of 240 members of parliament 31, or 12.91 per cent, are women (32 women were elected to the National Assembly at the general elections on 13 October 1991, but since one of them was appointed minister, another member of her political organization took her place in parliament under article 68, paragraph 2, of the Constitution). Women's access to institutions of higher education is equal to that of the other sex. Remuneration is determined not by sex but by labour contribution. Of 435,550 unemployed (on 29 February 1992), 236,402, or 54.27 per cent, were women.

40. In some respects women enjoy a more favourable status than men. Thus, men retire at 60, women at 55. Certain legal bans have been placed on the employment of women in specified harmful industrial processes which may affect detrimentally a woman's child-bearing functions.

41. Equality of man and woman in respect to rights and obligations exists in the family as well.

Article 4

42. According to article 57, paragraph 3, of the Constitution, the fundamental civil rights are irrevocable. It is possible to temporarily curtail certain rights only in the event of: (a) the declaration of war; (b) the proclamation of martial law; and (c) the imposition of a state of emergency.

43. The declaration of war, of martial law or state of emergency over the territory of the entire country or over part of it is in the competence of the National Assembly on the proposal of the President or the Council of Ministers (art. 12 of the Constitution). When the National Assembly is not in session, such powers are delegated to the President, but even then the National Assembly must be convened immediately in order to pronounce itself on the decision of the President (art. 99, para. 5).

44. At the same time, under article 57 of the Constitution, the following are explicitly not subject to temporary curtailment:

(a) The right to life;

(b) The ban on torture and cruel, inhuman and degrading treatment and on forcible assimilation;

(c) The ban on the subjection to medical, scientific and other experiments without voluntary written consent;

(d) The right of persons charged with committing crimes to be brought before a court within the time established by law;

(e) The ban on the use of force for obtaining confessions of guilt and on convictions resting solely on such confessions;

(f) The presumption of innocence;

(g) The right to personal inviolability and its protection against infringements;

(h) Freedom of thought, conscience and choice of religious faith or of religious or atheist persuasion.

45. Among the rights and bans that are not listed explicitly as not being subject to curtailment are the ban on slavery, the trade in slaves and servitude, which are alien to the Bulgarian way of life. The ban on imprisonment for not fulfilling a contract is also not listed since Bulgarian legislation excludes that possibility altogether.

46. It is necessary to mention here that as of the time of the Covenant's entry into force in respect to Bulgaria, no state of emergency has been declared in the country and no situations have arisen that may have required suspension or curtailment of rights. In the event that such a situation ever arises, Bulgaria will fulfil its obligations under article 4, paragraph 3, of the Covenant.

Article 5

47. The Constitution of the Republic of Bulgaria decrees that "the fundamental civil rights shall be irrevocable" (art. 57, para. 1). This constitutional provision constitutes a ban on actions by the State, groups of individuals or individual persons directed at usurping or removing rights and freedoms, or at curtailing them to a degree greater than necessary.

48. Until November 1992 a number of restrictions on human rights existed, some of which were even legally acceptable. One can quote here the leading role of the Bulgarian Communist Party proclaimed in the Constitution of 1971, as well as the practical curtailment of the freedom of speech and the press and of the freedom of association.

Article 6

49. According to the provisions of article 28 of the Constitution, every individual has the right to life, and attempts on the human life are punished as a most severe crime.

50. Premeditated attempts on the right to life (murder) are qualified in the national legislation as one of the gravest crimes. Under the Penal Code murder is punished severely, including in certain cases by death.

51. Premeditated murder accounts for a fairly large percentage of overall crime in Bulgaria (nearly one per cent). Between 150 and 200 people die as a

result of such crimes every year. Crime prevention in this field is particularly difficult because of the diversity of motives and causes. One of the causes, though naturally not the only one, is alcohol abuse.

52. The death penalty remains a provision in the current Penal Code of the Republic of Bulgaria. It is envisaged as a temporary and exceptional measure for the gravest premeditated crimes. At the same time the death penalty has imprisonment as an alternative in all texts of the law. The death penalty may be used in specified cases to punish murder, robbery resulting in murder, certain crimes affecting society in general that have also resulted in murder, crimes against the State, certain war crimes and certain crimes against peace and humanity.

53. There has been a sharp drop in the number of death sentence passed by Bulgarian courts in recent years. While in 1989 the courts passed down 15 death sentences (9 for murder and 6 for robbery resulting in murder). In 1990 there were only two (one for murder and one for robbery resulting in murder), and in 1991 no death sentences were passed. The reason for this drop is a change of attitude to the death penalty on the part of the judiciary resulting from the social and political changes in the country and the moratorium which has been imposed on executions.

54. As with all other penalties, executions cannot be carried out before the sentence has come into force and before all legal means have been exhausted for its appeal. Executions may not be carried out until the President has ruled on the option of changing the death sentence to imprisonment. Persons sentenced to death may seek to be pardoned or request a less severe sentence.

55. According to the Penal Code (art. 38) the death sentence may not be imposed on:

(a) Persons who were under 20 at the time of committing the crime or persons under 18 serving in the military or in time of war;

(b) Women who were pregnant at the time of committing the crime or at the time the sentence was passed;

(c) Persons deported from other countries on such condition.

56. Pregnant women may not be executed; in such cases the death sentence is commuted to imprisonment for no less than 15 years.

57. In recent years there has been a constant debate on the abolition of capital punishment in Bulgaria and it is expected to become much more active during the elaboration of the new Penal Code. In July 1990 the National Assembly decided to impose a stay on all executions until the issue of the death penalty has been resolved.

58. Genocide is a crime which has not been committed in Bulgaria. The provisions of the Penal Code (art. 416) envisaging severe penalties for this crime have thus not been applied by Bulgarian courts of law.

Article 7

59. Article 7 of the Covenant has been quoted nearly verbatim in the Bulgarian Constitution, article 29 of which reads:

> "(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation.
>
> "(2) No one shall be subjected to medical, scientific or other experimentation without his voluntary written consent."

Article 287 of the Penal Code provides for up to 10 years' imprisonment for officials who in the course of their duties resort to illegal coercive means to extract admissions, testimonies or statements from the accused, from witnesses or from court experts.

60. In the past two or three years data has been released about the systematic use of torture and other forms of cruel, inhuman or degrading treatment or punishment during the time of the totalitarian regime, including in concentration camps used for detaining people because of their political or personal outlook. Such facilities no longer exist. However, despite the legal bans imposed on acts described in article 7 of the Covenant and despite the State's clear position on such acts, abuse of power by officials cannot be excluded altogether, even at this time. Whenever such cases become known, the authorities take immediate action by adopting administrative and disciplinary sanctions (including dismissal from post) or by bringing the offenders before a court of law.

61. Corporal punishment is non-existent in Bulgarian law. Injuring someone, even lightly, is considered a crime and is punished accordingly. A qualified crime is one committed by an official in connection with or in the course of fulfilling his duties. Illegal detention is also a crime. Similarly, forcing citizens to do something, miss something or bear something against their will through the use of force, the threat of force or abuse of power is also a crime. Citizens' honour and dignity are also the subject of legal protection. Detaining a healthy person at a mental institution is also considered a crime punishable under article 142 of the Penal Code.

62. The ban set forth in article 7 of the Covenant and quoted in the Bulgarian Constitution remains valid for persons detained at correctional facilities. According to article 2, paragraph 2, of the Penalties Act, these may not cause physical suffering and may not hurt the human dignity. Incarcerated persons enjoy all rights under the law except those of which they have been deprived by their sentences, or those lifted or curtailed by law, or those the exercise of which is incompatible with the penalties. Prisoners may demand that they not be subjected to degrading treatment affecting their physical integrity and dignity.

63. Corporal punishment is banned in schools and has been rejected as an educational means.

64. The Penal Code (arts. 410-412) provides for very severe penalties for cruel treatment in time of war. Every person who commits or causes to be

committed torture or inhuman treatment, including biological experiments causing suffering and injurious to the health of civilians, prisoners of war, the wounded, the sick or medical personnel, is also subject to such penalties. These provisions are entered under the chapter "Crimes against Peace and Humanity".

65. Bulgaria is party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and submitted its first report on the implementation of the Convention to the Commission against Torture in 1991.

Article 8

66. Slavery and the trade in slaves are unknown in the Republic of Bulgaria. Thus, no legal norms exist in Bulgarian legislation concerning them. This holds true of servitude as well. The feudal system in Bulgaria existed until the end of the fourteenth century, when the Bulgarian people fell under Turkish domination.

67. Bulgarian penal law does not contain a provision for exile or forced labour. According to the Penalties Act, labour in correctional facilities is not mandatory but is a right of the prisoners. It is their right to receive a suitable job inside or outside the prison, which is provided by the administration by taking into consideration the prisoner's age, sex, health condition, professional qualification and personal inclinations as well as the requirements concerning security and conditions of imprisonment (art. 64 of the Penalties Act). The provisions of the labour laws are applied to the conditions under which prisoners work in terms of duration, lunch breaks, etc. Prisoners are paid for their labour.

68. Labour at correctional facilities leads to a shorter stay in prison, i.e. to shortening of the sentence, since two work-days are counted as three days in prison (art. 41, para. 3, of the Penal Code). This is an important incentive for prisoners to work without being forced to do so.

69. Given the current considerable unemployment in the country it is becoming increasingly difficult for prison administrations to provide prisoners with jobs. This is a challenge that prison administrators will have to confront.

70. Bulgarian penal law does provide for "correctional labour". It is imposed for light crimes and its duration is from three months to one year. The penalty of correctional labour is served at the place of work of the person sentenced or, for persons who are not employed, at a suitable place in their area of residence. Ten to 25 per cent of the remuneration is retained by the State, while the duration of the sentence is not considered as employment time for retirement. In 1991, 951 people were sentenced to correctional labour out of a total of 12,417 persons convicted.

71. The Penal Code sanctions crimes similar in essence to those under article 8 of the Covenant. Thus kidnapping a women for the purposes of prostitution is punished by up to 10 years' imprisonment (art. 156 of the Penal Code). Instigation to prostitution is also punishable. Forcing minors

or teenagers to prostitute themselves is considered a particularly grievous offence (art. 155 of the Penal Code). It should be added here that convictions for such crimes are extremely rare.

Article 9

72. Article 30, paragraphs 1 and 2, of the Constitution of the Republic of Bulgaria reflect in full the provisions of article 9 of the Covenant.

> "Everyone shall be entitled to personal freedom and inviolability.
>
> "No one shall be detained or subjected to inspection, search or any other infringement of his personal inviolability except on the conditions and in a manner established by a law."

73. These constitutional provisions are made more specific, further developed and sanctioned in the codes of procedure (the Code of Criminal Procedure, the Structure of the Courts Act, the Prosecutor's Office Act). Under these laws the detention of citizens is subjected to strict legal regulation which specifies the authorities empowered to detain, the reasons for detention, its duration and the appeal options.

74. The legal system of Bulgaria consists of three groups of bodies: the court (judges), the prosecutor's office (prosecutors) and the investigation (investigating magistrates). These bodies are independent of each other and each has specific functions determined by the Constitution and the law. They do, however, function in close interaction. This interaction is demonstrated in the case of detentions as well.

75. Permission to detain is granted by a prosecutor after he finds sufficient grounds to impose such a measure. Even without the knowledge of a prosecutor, investigating magistrates may order preliminary detention for crimes punishable by law with imprisonment or more severe penalties, but only in several cases specified by law: when the perpetrator is caught in the act, or shortly thereafter; when the perpetrator is recognized by an eyewitness; when visible traces are found of the crime on the person's body or clothes, or in his home; when the perpetrator has attempted to escape; when he has no permanent address, or his identity is impossible to prove at a time when there is reason to believe that he may have committed a crime (art. 202 of the Code of Criminal Procedure). In such cases investigating magistrates are obliged to notify the prosecutor within 24 hours and to communicate to him the reasons for the arrest. The prosecutor must immediately approve or revoke the detention.

76. Detention of citizens may also be imposed as a measure in penal cases when the said persons are accused or indicted. This measure is adopted by a prosecutor or court in order to prevent the accused from becoming a fugitive or committing another crime. Bulgarian penal procedure includes the following measures: release against oath, release on bail, home arrest and detention (art. 146 of the Code of Criminal Procedure).

77. Detention is the most severe restrictive measure, which is not applied very often. The law specifies the cases in which it may be imposed: when the

crime carries a penalty of over 10 years' imprisonment or death; in this case, however, a lighter measure may be used if there is no danger of the accused becoming a fugitive or committing another crime. Detention may also be used in the case of persons accused of committing lesser crimes if there is a reasonable danger of their becoming fugitives or committing other crimes (art. 152 of the Code of Criminal Procedure).

78. In determining restrictive measures due consideration is given to the gravity of the offence, the proof against the accused, his health, family, profession, age and other individual characteristics.

79. The duration of preliminary detention as a restrictive measure is considered part of a subsequent imprisonment sentence.

80. Preliminary detention is considered illegal if the investigation has been called off or the court has passed a verdict of not guilty. The authority which had ordered the detention may be subject to disciplinary action, including dismissal, or even to legal action.

81. According to a special provision in the Code of Criminal Procedure (art. 148, para. 2), the decision by virtue of which a restrictive measure is adopted, including detention, should be presented to the accused. The latter must be acquainted with the motives and grounds for the detention. This decision may be appealed to a prosecutor of a higher authority or in court. The prosecutor and the court may lift the detention order at any time during the investigation or the penal case. Next of kin must be notified of the detention.

82. Whenever the Chief Prosecutor extends the term of the investigation over the legal two-month period, he is obliged to make a pronouncement on the detention measure - to lift or confirm it. There is a similar obligation for the court at the time it passes the sentence. Whenever the accused is acquitted, given probation or a sentence that does not require detention, he is released in the courtroom.

83. Both in legislation and in the investigation and judicial practice an obvious inclination is manifested towards a speedy resolution of all cases involving detained persons, i.e. towards shortening the period of time between the perpetration of the crime and the passing of the sentence. The legal term for completion of the investigation of a case is two months. If the investigation cannot be completed within that period of time, the Chief Prosecutor may extend it to four months, or to six months in exceptional circumstances (art. 222 of the Code of Criminal Procedure). A well-argued request must be filed for every extension.

84. In 1990, only 3.4 per cent of all investigations took more than two months to complete while only 0.5 per cent took six months to resolve. In 1991 there was a deterioration in investigative practices, with 5.4 per cent of the cases taking over two months to resolve, and 2.5 per cent over six months. The reasons for this may be sought in the fact that the number of cases almost doubled in 1991 as compared to the previous year, while the number of investigating magistrates remained about the same. In 1990 there

were 168 cases per investigating magistrate, while in 1991 that figure rose to 227. Court action on the cases is also swift, with priority given to those cases involving detained persons.

85. Every detained person may appeal against the detention order. If the order comes from the investigating magistrate, the appeal is submitted to a prosecutor, who must make a pronouncement within three days of receiving it. If the case has already been transferred to the court, the latter handles the appeal. In order to prevent illegal or unmotivated detentions, prosecutors conduct systematic mandatory inspections of detention facilities.

86. Illegal detention of citizens is a crime under the Penal Code and is punishable by imprisonment. It is referred to as a qualified crime whenever the perpetrator is an official. Severe penalties are provided for cases when detention is imposed in a tortuous manner or is endangering the health of the detained citizen, or when the latter has been detained for more than 48 hours, or when a healthy individual has been detained at a mental institution. A qualified crime involving a more severe penalty is the detention of a person enjoying international protection (art. 142 of the Penal Code).

87. According to article 7 of the Constitution the State is held liable for harm caused by illegitimate rulings or acts of its agencies and officials. This constitutional provision is made more specific and is further developed in the Liability of the State for Damages to Citizens Act, according to which the State is held liable for property and non-property harms caused to citizens by investigating bodies, the prosecution and the courts in the following cases: when detention as a restrictive measure has been lifted due to its illegitimacy; when the accused has been acquitted or the investigation has been called off; when a guilty verdict has been overturned; when the accused is unnecessarily subjected to forced medical treatment and when a person is kept at a detention facility for longer than the term of the sentence (art. 2 of the Act). Compensation is awarded by the court on the grounds of a claim filed by the party concerned.

88. In 1991 the National Assembly of the Republic of Bulgaria adopted the Act on Political and Civil Rehabilitation of Persons Repressed during the Totalitarian Regime because of Their Origin, Political and Religious Persuasion. It concerns the following categories of persons: those convicted on political grounds; those illegally detained by the authorities; those interned, exiled or resettled by administrative order; dismissed university and high-school students; persons repressed in connection with the forcible name-changing campaign; missing persons. Such individuals or their heirs may receive compensation from the State budget. The object of this Act is to compensate as much as possible for the atrocities committed by the totalitarian regime.

Article 10

89. The problems treated in article 10 of the Covenant pertain to two categories of persons: those placed in detention, and those sentenced to imprisonment and serving the sentence at a correctional facility (mainly in prisons). From the point of view of the requirements of the Covenant, no

considerable differences exist in the treatment of the two categories of persons. Such cases are legally regulated by the Penal Code and the Penalties Act.

90. The general position of Bulgarian legislation is expounded in article 35 of the Penal Code: penalties may not have as their object to cause physical suffering or to hurt human dignity. The Penalties Act contains provisions which implement this principle in practice.

91. Detained persons may enjoy all rights under the law, including the right to demand humane treatment and respect for themselves and their dignity. Several exceptions are pointed out clearly in the law: detained persons may not enjoy those rights of which they have been deprived by a court sentence; the rights of which they have been deprived by law or decree, or those rights which are incompatible with their status of imprisoned persons (art. 23 of the Penalties Act).

92. There is indeed some doubt about the necessity and fairness of the constitutional provision (art. 42), also repeated in the Electoral Act, preventing persons serving prison sentences from taking part in elections or being elected without having been prevented from doing so by a verdict. The issue is particularly sensitive in the case of persons convicted for unpremeditated crimes and less socially dangerous crimes.

93. The Penalties Act regulates in great detail the legal status of persons serving prison sentences. The jobs they perform are generally compatible with the Labour Code in terms of remuneration, duration, daily breaks, week-end leave and annual leave, etc. Prisoners are entitled to medical treatment free of charge, to visits by relatives, to contacts with the family, to receive correspondence and food parcels, to the right to receive information from the press, radio and television, to indulge in creative efforts, etc. The Ministry of Justice, which is in charge of all prisoners, may permit particularly valuable experts to be employed exclusively in intellectual work, with the time spent in such manner being considered as ordinary working time. Such persons are entitled to receive the full amount of their earnings from works of art, inventions, etc., and enjoy all rights under the law, particularly under the Copyright Act. Prisoners attend social education classes and may obtain professional qualification (chap. II of the Penalties Act).

94. The Penalties Act envisages guarantees of prisoners' rights. One of them is the prosecutor's control over detention facilities. Prosecutors may visit such facilities at any time, conduct inspections, talk with prisoners, and examine complaints and requests. They may void illegitimate orders and, in cases of illegal actions of prison officials, may, depending on the severity of the violations, charge offenders, ask for disciplinary or administrative penalties, or seek damages. Courts have similar powers (arts. 4 and 5 of the Penalties Act).

95. Prisoners whose rights have been violated may file complaints with the supreme and other State authorities and institutions, including the Human Rights Committee. Requests and claims may not be read or censored by prison administrations.

96. As mentioned above, detention of healthy individuals at mental institutions constitutes a crime punishable by imprisonment.

97. Over the past two years there has been a significant drop in the number of people detained at correctional facilities. In 1989 there were 12,253 prisoners; in 1990 the number dropped to 10,779, and in 1991 to 7,146, which amounts to a 42 per cent decrease in three years. There are two reasons for this: an inclination to combat crime outside the courts, and lower activity on the part of law enforcement authorities and a smaller percentage of solved criminal cases.

98. The regime at correctional facilities is differentiated depending on sex, age, the nature of the crime, previous criminal record and the gravity of the danger the convict represents to society. The accused are kept apart from the convicts and live under a different regime. This is also true of young people. Juvenile delinquents (14 to 18 years old) are not sent to prisons but to special correctional institutions where the regime is significantly lighter from that of prisons.

99. The Penalties Act clearly formulates the principle that penalties are primarily designed to help convicts change their way of life and to teach them respect for the law (art. 2). The organization of prison life is particularly tuned to that objective. This is strongly reflected in the treatment of convicted minors. Correctional institutions for juvenile delinquents are governed by educational councils which set educational policies. Inmates attend regular classes and live in considerably greater comfort compared to that of ordinary prison inmates.

100. Special studies of penitentiary institutions are carried out in Bulgaria to determine and help neutralize the possible negative impact which the stay in these institutions has on young people.

101. Despite the requirements for humane treatment of prisoners and the control over their implementation, irregularities by prison officials may not be excluded altogether. Reaction to such irregularities is prompt and may include dismissal or bringing before a court.

Article 11

102. Persons failing to meet obligations arising from a contract may not be punished by imprisonment (jailing of debtors) under Bulgarian law. Liability in such cases may only be sought through a civil suit.

Article 12

103. According to article 35 of the new Bulgarian Constitution, everyone is free to choose his or her place of residence, to travel in the country and to leave its territory. This right may only be restricted by a law in the name of national security, public health, and the rights and freedoms of other citizens. This constitutional provision is equally valid for Bulgarians and for foreign nationals staying in Bulgaria. The restrictions on settlement in the capital and in other major cities were lifted in 1990.

104. The bureaucratic obstacles caused by the strict regime for leaving the country were lifted at the end of the 1980s. Restrictions on the liberty of movement in the country, the free choice of residence and the freedom to leave the country may be imposed only when certain circumstances described in the Constitution arise warranting such restrictions. Article 7 of the Foreign Travel Passports Act contains the grounds on which a refusal to issue a passport may be based. A passport may not be issued to persons under investigation or who are accused in a criminal case; to convicts who have not served their sentences; to persons whose travel may threaten the security of the Republic of Bulgaria; to persons owing considerable amounts of money to the State or to legal or natural persons; to persons previously sentenced or penalized for repeatedly violating customs or currency regulations (within one year), etc. This has led to a significant increase in the number of Bulgarian nationals travelling abroad. They were 2,394,873 in 1990 and 1,588,724 in 1991. The drop in the second year was due to a lowering of the population's real earnings during the transition to a market economy.

105. The provisions of article 12, paragraph 3, of the Covenant are in effect in Bulgaria.

106. Under the Constitution, Bulgarian nationals are free to return to the country at any time and this right may not be restricted for any reason whatsoever.

Article 13

107. Foreign nationals staying legally in Bulgaria enjoy the rights and obligations under Bulgarian law and the international instruments to which Bulgaria is party. They must, however, register their address of residence. There are no restrictions on their place of residence and their liberty of movement: they may travel anywhere in the country with the exception of the border areas and certain restricted zones. Foreign nationals must respect Bulgarian laws and public order, as well as the morals and traditions of the Bulgarian people.

108. Foreigners may only be detained on the grounds on which that measure is applied to Bulgarian citizens. The embassy of the detained foreign national's native country must be notified immediately.

109. Foreigners residing legally in the country may not be expelled or extradited to another State against their will, except under the provisions established by a law (art. 27 of the Constitution). Such a law is the Stay of Foreigners in the Republic of Bulgaria Act, according to which the Minister of the Interior or other officials duly empowered by him may revoke the right to stay in the Republic of Bulgaria of foreign nationals on the following grounds: when the foreign national poses a threat to the security or interests of the State or has acted against them; when he has slandered the Republic of Bulgaria or has acted against the prestige and dignity of the Bulgarian people; when he has entered the country with the objective of perpetrating crimes; when he has violated customs or currency exchange regulations; when he has previously been expelled or extradited from the country; when he is suffering from a severe contagious disease; or when he does not have the means to support himself. The Penal Code does not provide

for expulsion as a penalty, but ideas have been put forward during the debates on the new Penal Code in favour of enabling courts to issue expulsion orders under certain conditions.

110. Persons affected by an expulsion order are free to present their arguments against such a decision and appeal to the Minister of the Interior. The decision of the latter may be appealed under the Administrative Jurisprudence Act. Persons subject to expulsion may choose the State to which they will be sent.

111. The Republic of Bulgaria provides asylum to foreigners persecuted because of their persuasion or actions in support of internationally recognized rights and freedoms.

Article 14

112. The Constitution of the Republic of Bulgaria of 1991 marked the beginning and became the cornerstone of a radical reform in the country's judicial system. The founding principle of that reform is the division of authority, which was flagrantly ignored in the past. This has permitted the emergence of an independent judiciary which guarantees independent and fair justice subject only to the Constitution and the law.

113. The new Constitution also set the beginning of a radical restructuring of material and procedural legislation. Preparatory work is under way on a new Penal Code and a new Code of Criminal Procedure, as well as on new structural laws such as the Structure of Courts Act and the Prosecutors' Offices Act. The aim of the restructuring is to rid justice of everything that affects in a detrimental manner its humane function as a guarantor and protector of human rights.

114. The constitutional principle of equality before the law is made more specific in a court trial as a principle of the equality of all sides. In Bulgarian law this is reflected in article 10 of the Code of Criminal Procedure:

> "All citizens parties in a criminal case are equal before the law. No privileges or restrictions based on nationality, origin, religion, sex, race, education, public or financial status shall be permitted. The court and investigative authorities shall apply the law strictly and equally for all citizens."

115. Openness is another important principle in a criminal case. A trial may be attended by anyone, including representatives of the media. The media is a further vehicle of openness. Exceptions to this principle are permitted only for the cases listed in the Code of Criminal Procedure. Closed-door hearings are permitted only when the substance of a case constitutes a State secret, for preserving public morals or, whenever necessary, in order to prevent facts about a person's private life becoming known to the public (art. 262 of the Code of Criminal Procedure). Cases involving minors are also examined behind closed doors unless the court decides on an open trial. The aim of this

restriction is to ensure a calmer atmosphere in the courtroom and to reduce the stigmatization effect on minors. In all cases, however, the sentence must be read in public.

116. The presumption of innocence is one of the founding principles of Bulgarian criminal justice formulated in article 12, paragraph 2, of the Code of Criminal Procedure: "The accused shall be presumed innocent until proved otherwise by a verdict." Charges must be proved beyond any doubt. The weight of proof rests on the accusing party: with ex officio criminal cases that is the prosecutor, while with cases arising from private claims, the plaintiff has to prove the case.

117. A guilty verdict may not be based on assumptions and doubtful evidence. Any doubt as to the guilt of the accused shall be interpreted by the court in his favour (in dubbio pro reo). A guilty verdict may not rest solely on the admission of the accused. Corroborating evidence is required.

118. The accused has the right to the last word. He may use it to express his view on the charges in the light of the hearings and the positions taken by the parties. The court must allow the accused to say whatever he considers necessary without placing him under temporal or other restrictions (art. 295 of the Code of Criminal Procedure).

119. The requirements contained in article 14, paragraph 3, of the Covenant regarding the rights of the accused have been introduced into Bulgarian law in their entirety:

(a) Everyone charged with an offence shall be informed of the charges against him. This right of the accused is at the same time an obligation for the investigating authorities and the prosecution. The rights of the accused must be explained to him by the investigating magistrate. It is however impossible to provide any figures about violations of this obligation;

(i) The rights to defence is set by the Constitution. It is practically implemented in the Code of Criminal Procedure by granting to the accused the opportunity to acquaint himself with the evidence in the case, the opportunity to request evidence that refutes the accusations, to determine different circumstances and to prove his innocence, as well as to demand certain legal procedures;

(ii) The right of the accused to defence and to establish contacts with his defence counsel, which is an important element of the right to defence. This issue has been developed in a positive manner in recent years. Until 1990 defence counsel was permitted only after the completion of the investigation. Even in that later phase it was largely formal. At this time the accused may use defence counsel from the moment of his detention or from the time of his appearance before the court. The accused may meet with his lawyer in private while in detention. The secret of their conversation is considered inviolable (art. 30, para. 5, of the Constitution);

(iii) Under the Defence Counsel Act of 1991 the lawyer's profession is a constitutional activity of providing legal assistance and protection of the freedoms, rights and legitimate interests of natural and legal persons which is practised following the principles of independence and self-government. The lawyer has free access to cases and is entitled to priority in obtaining information from the court, the prosecution and investigation and the administrative authorities. He may meet in private with other detained persons or prisoners without the presence of an official and no eavesdropping is allowed at such meetings under any form whatsoever (art. 19 of the Defence Counsel Act). In general Bulgarian law provides for proper legal defence;

(c) The duration of the preliminary investigation is fairly brief by law. This enables offenders to be brought before a court in rather a short time. There does appear to be a willingness on the part of Bulgarian legal authorities to shorten even further the procedure without affecting adversely the rights of the accused;

(d) The accused is free to decide whether to use defence counsel or which particular lawyer to choose. There are cases, however, when the participation of a defence counsel is mandatory: when the accused is a minor or is impaired physically or mentally and is thus unable to defend himself; when the crime of which he is accused is punishable by death or imprisonment for more than 10 years; when the accused does not speak the Bulgarian language; when the interests of all the accused (when there is more than one in a case) are contradictory and one of the accused uses defence counsel (art. 70 of the Code of Criminal Procedure). In such cases the investigating magistrate or the court must provide official counsel if the accused has himself not hired one;

(e) The equality of the sides in a criminal trial is reflected in the right of the accused to require the gathering of evidence and the interrogation of eyewitnesses, who are called in a manner similar to that of witnesses for the prosecution;

(f) The investigating magistrate and the court must provide free of charge an interpreter if the accused does not understand or speak Bulgarian or if his hearing is impaired;

(g) It is a crime punishable by up to 10 years' imprisonment to force an admission of guilt.

120. The Penal Code and the Code of Criminal Procedure contain special chapters on crimes committed by minors (14 to 18 years old). Special courts for minors do not exist. Cases involving minors are examined in general courts under special conditions, the most important of which are: the accused may be placed under the supervision of their parents or an inspector of the Minor Offenders Educational Board, while detention is practised only in exceptional circumstances; whenever necessary a psychologist or psychiatrist attends the interrogation of a minor; the jury in such cases may consist only of teachers or social workers who are themselves parents; the parents of the accused are called to appear before the court; cases involving minors are

generally examined behind closed doors; penalties imposed on minors are substantially lower; in certain cases specified by law, minor offenders sentenced to imprisonment are not sent to correctional facilities but to educational centres (arts. 377-387 of the Code of Criminal Procedure).

121. There is a two-tier system of examining cases in Bulgaria. Every sentence passed by a court may be appealed to the higher judicial authority: sentences passed by regional courts are appealed to district courts, those by district courts are appealed to the Supreme Court. The new Constitution provides for the building of a three-tier system by establishing courts of appeal, but that reform has not yet been made. This will be done in the near future through changes in the laws governing the structure and procedures of the courts.

122. Apart from appealing, those convicted may seek retrial by asking for a review or reopening of criminal cases. If the Supreme Court finds sufficient legal grounds it may reverse a verdict and return the case for retrial.

123. Under the Liability of the State for Harm to Citizens Act, a person falsely detained or sentenced and imprisoned is entitled to compensation. He must file a claim for that purpose. A falsely sentenced person may announce in the media that the guilty verdict has been reversed and that he has been acquitted.

124. Bulgarian courts are obliged to respect the classic rule of non bis in idem (art. 21 of the Code of Criminal Procedure).

Article 15

125. Bulgarian criminal law recognizes the principle that a crime is action or inaction that is pronounced to be such by law (art. 9 of the Penal Code). The development of criminal law in Bulgaria has permitted an even more precise definition of this principle: a crime is an act that has been proclaimed as such by the penal law at the time of its commission. It is the moment of perpetration of a crime that is decisive in qualifying it as a crime and in choosing the penalty for the offender. Criminal law may not have retroactive effect. If, however, new legislation is passed between the moment of the perpetration of the crime and the entry into force of the sentence, that law is applied which is most favourable for the offender (art. 2, para. 2, of the Penal Code).

126. Criminal law may not be applied by analogy, neither can anyone be sentenced solely following the general spirit of the law. Broader interpretation may not be made of the criminal legal norms (art. 46, para. 2, of the Implementation of Laws Act).

127. The ban on the retroactivity of criminal law is applied throughout the entire trial. After the entry into force of a sentence, the changes that may arise in legislators' outlook which are reflected in changes of penalties or decriminalization of certain acts, may serve as grounds for pardoning offenders or for an amnesty.

128. The generally accepted principles of criminal law are incorporated in Bulgarian law. No one may be sentenced solely on that basis. The act (action or inaction) must be pronounced a crime in the Penal Code in order to constitute a crime. There is a similar situation concerning penalties: crimes may only be punished by such penalties as are particularly provided by law for such crimes. The specific duration of the penalty is determined by the court within the framework of a given maximum and minimum contained in a respective law for the particular crime in question and by observing the rules the law has set for determining penalties.

129. The above principle in Bulgarian law may not be revoked even in a state of emergency.

Article 16

130. In Bulgaria, recognition as a person before the law is an inviolable rule. Every individual acquires recognition, i.e. the ability to be bearer of rights and obligations, from the moment of his birth (art. 1 of the Individuals and Family Act). On the grounds of recognition the law establishes the ability of the individual to conduct certain legal actions, i.e., his activity. The most important criterion here is age; complete recognition is obtained at the age of 18.

131. Bulgarian law recognizes the principle of conceptus pro jam nato habetur, i.e. the individual exists from the moment of conception and may bear the right to inherit (art. 2 of the Inheritance Act).

132. Recognition may not be revoked or withdrawn even for minors or the mentally ill. Their activity, however, may be restricted.

Article 17

133. Article 32 of the Constitution reflects the principle of non-interference in one's private life: "the privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any illegal interference in his private or family affairs and against encroachments on his honour, dignity and reputation." Other articles of the Constitution further develop the principle of non-interference in one's personal affairs. Thus, it is prohibited to photograph, monitor, film, record or subject to other similar actions anyone without his consent or in spite of his objections, except in cases provided by law; no one may be subjected to inspection, search or other violations of his personal inviolability except in cases provided by law; no one may be subjected to medical, scientific or other experimentation without his voluntary consent in writing.

134. It is prohibited to gather information about citizens solely on such criteria as race, religion, political persuasion, association with trade unions, cultural or charitable organizations, or for any other legal activity they may be pursuing in these fields (art. 37, para. 2, of the Ministry of the Interior Act).

135. The implementation of the principle of non-interference in one's private affairs is guaranteed in the Penal Code: the various forms of such

interference are considered a crime punishable by law. Currently the Penal Code is not fully compatible with the new Constitution and changes are being discussed to bridge the gap.

136. The inviolability of the home is also a constitutional principle (art. 33). No one may enter and stay in another man's home without the latter's consent, except in the cases provided by law. Entry into an individual's home without his consent or without the permission of the Judiciary may be allowed only in order to prevent a crime that is about to be committed or during its commission, to seize an offender, or in the case of an emergency (fire, flood, etc.).

137. According to a special chapter of the Penal Code (art. 170), violations of the inviolability of the home are punishable by imprisonment. Thus, 118 persons were sentenced for such a crime in 1989, and 56 in 1990.

138. The inviolability of correspondence is also a constitutional principle: "The freedom and confidentiality of correspondence and all other communications shall be inviolable. Exceptions to this provision shall be allowed only with the permission of the judicial authorities for the purpose of discovering or preventing a grave crime" (art. 34 of the Constitution). Violation of the privacy of correspondence also constitutes a crime (art. 171 of the Penal Code). The current legal regulation, however, was found to lag behind the advancement of modern communications technology. It was therefore recommended during the discussion of the new Penal Code to expand the relevant chapter in order to place a ban on certain new developments in communications, including computer crime.

139. The secrecy of adoption is also legally protected in Bulgaria and violations thereof are punishable by law.

140. Besides the legal protection provided by the State, citizens may seek the personal protection of their homes and correspondence by filing claims in court for property and other damage.

Article 18

141. The inviolability of the freedom of thought, conscience, and the choice of religious or atheist persuasion is a constitutional principle (art. 37). Every citizen of the Republic of Bulgaria is free to choose and practise any religion of his own choice. There is tolerance in respect to religious outlook and religious practices both on the part of the authorities and among citizens. No religious violence has been recorded in Bulgaria's modern history.

142. Sociological studies prove that 48.5 per cent of Bulgarians are religious. In the Muslim community this percentage is higher - 74.1 per cent - while the proportion of religious people in the Christian community is 47 per cent. The Eastern Orthodox Church is most popular, with a following of 87.5 per cent of the religious people in the country. Catholics are 0.9 per cent, Protestants are 0.5 per cent, Armenian and Georgian Christians are 0.2 per cent. A total of 89.1 per cent of the religious people in Bulgaria are Christians.

143. The religious institutions are separate from the State. The State plays a role in assisting and maintaining tolerance and mutual respect between the followers of different religions, and between religious people and atheists. Every religious community is free to practise its rites and rituals.

144. The traditional religion of Bulgaria is the Eastern Orthodox Christian faith. It is professed by the majority of the population. There do exist groups that practise Catholicism or the Protestant faith, as well as others that profess Islam; many are atheists.

145. The different faiths have their own educational institutions. There are two theological faculties with Bulgarian universities. The Eastern Orthodox Church has two seminaries, there is also a Muslim college and secondary school, as well as a biblical college.

146. The authorities' negative attitude towards religion and the religious institutions at the time of the totalitarian regime has been overcome. New churches are being built and old ones repaired.

147. Violations of religious freedom and the use of threat of force to prevent citizens from practising their religion constitute a crime, punishable by imprisonment. This holds true also for cases of imposing a religion by force. No one has been convicted of committing a crime against a religious community in recent years.

148. The freedom of conscience and religion may not be directed against national security, public order, public health or the rights and freedoms of other citizens. The Constitution bans the use of the religious communities and institutions for political purposes. It is also illegal to establish political parties on religious grounds.

149. There are no formal or informal regulations restricting the rights of parents or guardians to provide a religious or moral education to their children following their own persuasion. Such issues are considered private and no one may interfere with them.

Article 19

150. According to the Constitution of the Republic of Bulgaria, no one may be persecuted or restricted in his rights because of his views, nor may he be obliged or forced to provide information about his own or another person's views (art. 38). Citizens' opinions are their own private concern with which no one may interfere.

151. Everyone is entitled to express an opinion or to publicize it through words, written or in speech, sound or image, or in any other way (art. 39 of the Constitution). The censorship of the press and the other media which existed in Bulgaria prior to 1989 has been lifted. The media are now completely free.

152. All political, trade union and other groups have their own publications reflecting their policy and attitude to the development of society and the State. Journalists are free to express and defend their positions and the

authorities are not allowed to exercise any control over them. Every journalist may freely practise his profession but is also responsible for his actions when they concern the rights of other people (liability for slander, libel). There are those in the country who believe that a law on the press must be passed in order to provide regulation of journalists' rights and obligations.

153. Access to foreign newspapers is free and they may be imported into the country without restriction. Similarly, Bulgarian publications may be freely exported abroad. Foreign radio stations transmit on Bulgarian territory and the first private Bulgarian radio stations are already on the air. The question of private television is also being discussed.

154. Apart from the restrictions on the dissemination of views contained in article 39, paragraph 2, of the Constitution, a similar restriction is placed on the expression of views that foster hatred on political, ethnic or other grounds. Violence on political grounds is a crime punishable by up to three years' imprisonment (art. 162 of the Penal Code). No one has been convicted for such a crime in the past several years.

Article 20

155. The foreign policy of Bulgaria is based on principles that exclude war as a means of resolving conflicts between States. All initiatives of the Bulgarian Government in this field are directed at strengthening peace in the Balkans and worldwide. This consistent position determines the ban on war propaganda. Under the Penal Code such propaganda constitutes a grievous crime against peace punishable by up to eight years' imprisonment, and in certain qualified cases (when directly or otherwise through the press, radio or by word someone is trying to cause one State to attack another), the penalty is three to 10 years' imprisonment. Persons guilty of planning, preparing or waging aggressive wars are punished by 15 to 20 years' imprisonment or death (arts. 407-409 of the Penal Code).

156. Instigation of hatred on national, racial or ethnic grounds, and the preaching of discrimination, hostility and violence are crimes. The establishment of or participation in groups pursuing the goals set out above is a qualifying element leading to more severe penalties (arts. 162 and 163 of the Penal Code).

Article 21

157. The Constitution of the Republic of Bulgaria ensures the citizens' right to peaceful assembly (art. 43). The regulations for the calling and organization of assemblies are contained in the Rallies, Meetings and Demonstrations Act of 1990.

158. Rallies, meetings and demonstrations may be organized by all political and public organizations and citizens. Citizens are free to express their views, ideas and positions of political, economic, social, cultural or other character at such gatherings.

159. No permission whatsoever is required for staging such events. Organizers must only inform in writing the local municipal council and indicate the organizer, purpose, time and place of the gathering. Such notice should be submitted at least 48 hours before the event (five days for demonstrations). A municipal council may ban the event if it is clear without any doubt that: it is directed at the forcible change of the public or political order or against the territorial integrity of the country; it threatens public order; it threatens public health, if it is conducted at the time of an epidemic; or it violates the rights and freedoms of other citizens. An appeal against such a ban may be made to the executive council of the municipal council.

160. The chairman of the municipal council may terminate a meeting, rally or demonstration if it is held in violation of the law.

161. Citizens carrying arms or other objects that may serve as assault weapons, intoxicated persons or persons wearing masks that may prevent their identification are not admitted to events, and the organizers and participants in public gatherings are liable for any damage caused during the said events.

162. Article 4 of the Act states that citizens cannot be punished for organizing or participating in rallies, meetings and demonstrations or for views, ideas or positions expressed by them unless their dissemination constitutes a crime or other violation.

163. There are certain penal provisions that, on the one hand, guarantee the freedom of rallies, meetings and demonstrations and, on the other, ensure their legality. Anyone who disperses a public gathering or prevents its holding by violence, fraud, threat or other illegal means is punishable by imprisonment for up to two years. Penalties are also provided for organizers of banned events.

164. It is necessary to note that despite the strong political feelings in Bulgaria and the numerous rallies, meetings and demonstrations, no severe violations of public order resulting in violence or loss of life have been recorded so far.

Article 22

165. A general text in the Constitution (art. 44, para. 1) confirms the right of citizens to free association. This text is made more specific for workers and other employees to associate in labour unions for defending their interests in terms of employment and social security. The principle of freedom of association is also confirmed in the current Labour Code. According to article 33, paragraph 1, of the Labour Code, "citizens are free to associate in professional organizations in order to express and defend their interests arising from employment". Paragraph 2 of this article defines labour unions as mass voluntary organizations uniting workers irrespective of their political views, nationality, race, sex, religion, public, material or official status.

166. Labour unions function in accordance with their charters. They are independent of the State and of employers. This is confirmed by the fact that labour unions become legal persons on the day of their inception without the

need for registration or approval by any authority. Certain functions alien to unions were dropped after 1989, such as legislative initiative, union control over the implementation of labour legislation and participation in its elaboration and practice.

167. The Labour Code is due to be updated, particularly in the field of collective rights. The issue of collective contracts and their binding force on individuals will be addressed in a new manner meeting the requirements of Convention 98 of the International Labour Organization (ILO). These issues are also addressed in the Collective Labour Disputes Act of 1990. Chapter III of that Act regulates strike action as a right of the labour unions (arts. 10-19).

168. Bulgaria is a member of the ILO, which facilitates control over the freedom of association in protecting the interests of employees and employers. Irrespective of the fact that there is no law on the employers' right of association, this right is exercised on the grounds of article 1 of ILO Convention 87 (ratified by Bulgaria in 1959).

169. There are two major labour unions in Bulgaria at this time: the Podkrepa Confederation of Labour and the Confederation of Independent Trade Unions in Bulgaria. The majority of employees in Bulgaria are members of one of those two organizations.

170. Associations may also be formed following other criteria of community of goals and interests. Cooperative organizations and political parties are the other popular forms of association.

171. Cooperatives are voluntary organizations of natural persons with variable assets and membership which conduct economic or other activity through mutual assistance and cooperation in the pursuit of their interests. Cooperatives are established in industry, agriculture, trade, banking etc. Their operation is regulated in the Cooperatives Act of 1991.

172. Two political parties existed in Bulgaria prior to 10 November 1989: the Bulgarian Communist Party and the Bulgarian Agrarian Party, which was in fact a satellite organization of the former. The dismantling of the totalitarian regime opened the road for pluralism and for the freedom of citizens to associate in political parties. Numerous parties and coalitions were formed which now play an active part in the country's political life.

173. Article 11 of the Constitution provides the legal basis for the operation of the political parties: "Politics in the Republic of Bulgaria shall be founded on the principle of political pluralism ... All parties shall facilitate the formation and expression of the citizens' political will". The Political Parties Act of 1990 regulates the formation and liquidation of political parties.

174. Bulgarian citizens with electoral rights may form political parties. Political parties are entered in a special court register. The law (art. 3) bans the formation of political parties in the following cases:

(a) When the party's activities are directed against the sovereignty and territorial integrity of the country and the unity of the nation, the rights and freedoms of citizens;

(b) When the objectives of the party violate the Constitution and the laws;

(c) When parties are founded on a religious or ethnic basis, or aim at kindling racial, national, ethnic or religious hatred;

(d) Parties which support Fascist ideology or are willing to resort to violence or other illegal means in the pursuit of their interests.

175. Armed or secret groups may not be formed within political parties.

176. Parties may derive their support from membership fees, donations, last wills, revenues from economic activity and subsidies from the State budget. The State subsidizes the political parties during elections, as well as their overall activities, with funds from the State budget.

177. Political parties are dissolved when they merge with other parties, divide into two or more parties, or are dissolved by the will of their own members or by decision of the Supreme Court. The grounds for dissolving a party by a court of law are similar to those on which parties may not be formed.

178. The freedom of association may not be restricted in any manner except by the requirement that it be implemented in conformity with the law. The mandatory registration in court does not mean control, but is rather a verification that the legal requirements have been met.

Article 23

179. The family is entitled to protection by the State. Bulgarian legislation includes provisions for the implementation of this right in its various aspects. The law, however, does not provide a definition of the term "family". It is assumed that a family is a blood and social community of parents and children.

180. According to the definition provided by the Constitution (art. 46), matrimony is a free union between man and woman. An absolute condition for entering into a marriage is that it be voluntary, i.e. that both spouses agree to do so and declare it personally and at one and the same time before a competent public official.

181. Under Bulgarian legislation people may get married over the age of 18. As an exception when certain special circumstances exist, people may marry over 16, but only with the permission of the president of the regional court after hearing the motives of the minor and his parents.

182. Bulgarian law recognizes only civil marriages. This does not prevent couples from marrying in church after doing so at a civil institution.

183. Cohabitation of unmarried couples is not prohibited, but it is not encouraged by society and is not particularly common.

184. Married persons cannot enter into another marriage. Persons placed under complete prohibition, those suffering from mental illnesses which are grounds for such prohibition, and persons suffering from severe diseases threatening the life or health of the offspring or the spouse may not marry. Marriage between close relatives of a kind specified in law is prohibited.

185. Spouses have equal rights and obligations in matrimony and the family (art. 46 of the Constitution). The spouse is free to choose his or her profession and to address other private issues. At the time of entering into matrimony each of the spouses must declare whether he or she would like to retain his or her surname or would adopt the surname of the other spouse, or add that to her own surname. Bulgarian law has adopted the principle of common property: everything acquired during a marriage is considered the property of both spouses irrespective of the nominal proprietor. The property a spouse has acquired prior to the marriage or has received after that marriage as inheritance of gift remains his or her private property.

186. The Family Code addresses all marital relations. It also regulates issues related to the protection of children. In divorce cases one of the main issues courts are called upon to decide is parental rights over children, how to provide children with support and a home. The main criterion in resolving such cases is the interest of the children. Support money, the amount of which is determined by mutual agreement or in court, is paid to the parent who looks after the children after the divorce by the other parent.

187. Young families are placed under the special protection of the law. They enjoy certain privileges in obtaining a home and in receiving a newly-wed loan as well as other loans for settling in a new home. The mother (or father) is entitled to extra paid maternity leave until the child is two years old, and bonuses are paid for every child in the family.

188. Marriage and the family are placed under the protection of penal law. The Penal Code contains norms sanctioning certain acts that violate the legal and moral obligations of spouses.

189. Bulgarian law provides for two kinds of divorce: on the request of one of the spouses, or by mutual consent. In both cases divorces are ruled by the court. Either of the spouses may file for divorce if he or she considers the marriage to be seriously and irreparably disrupted. In the case of divorce by mutual consent, the consent of both spouses should be clearly expressed before the court.

190. The economic difficulties experienced by the country at this time certainly affect the family and particularly its ability to meet some of its needs, and in general its financial stability and prosperity.

Article 24

191. The education and protection of children up to the age of 18 is the right and obligation of their parents, who receive assistance from the State. No

differences exist in the treatment of children in terms of legal status and opportunity. The principle of equality is applied consistently: children born outside marriage enjoy equal rights with those born in a marriage. Bulgarian law does not recognize the term "illegitimate children". Children left without close relatives and parents are placed under the constitutionally provided specific protection of the State. The State runs orphanages and takes care of the support and education of orphans.

192. Children become bearers of rights and obligations from the time of their birth. Their recognition as persons, however, is restricted, i.e. the ability to exercise the rights of which they are bearers. These rights are exercised by their legal guardians and the parents.

193. Society and the State are devoting considerable efforts to providing good conditions for the education and general well-being of children. Education in Bulgaria is free of charge, thus providing everyone with equal opportunity for receiving a proper education.

194. Children also enjoy the protection of penal law. The Penal Code provides for the responsibility of parents who through neglect endanger their children's physical, mental or moral development (art. 182 of the Penal Code). Divorced parents who do not pay support money for their children are also subject to penalties.

195. Penal law contains special rules for bringing minors to trial. These were pointed out in the discussion of the issues under article 14 of the Covenant. It is worth recalling here that penalties for juvenile delinquents are significantly lighter than the penalties otherwise imposed for similar crimes. A special procedure is also envisaged which takes age into consideration. The problem of educating minors is given priority in any court action taken against juvenile delinquents.

196. Under the Children and Family Act a birth certificate is issued by the civil status official at the local municipality for every child shortly after his or her birth. This certificate includes the name which the child will bear for life.

197. Upon birth every child receives citizenship. Bulgarian citizenship is provided when:

(a) Both parents are Bulgarian citizens;

(b) One parent is a Bulgarian citizen, while the other parent is unknown or is without citizenship, or his or her citizenship is unknown;

(c) The child was born in Bulgaria and one of the parents is a Bulgarian citizen, while the other is not;

(d) The child was born abroad and one of the parents is a Bulgarian citizen, except if the child was born in the native country of the parent who is a foreigner and the law of that country recognizes that child as a citizen of that country.

198. Besides receiving Bulgarian citizenship by origin, a child may receive it on the grounds of place of birth in certain cases provided by law.

199. The minimum employment age in Bulgaria is 16. As an exception, children aged over 15 may be employed but only for such jobs as are not harmful to their health and do not impair their physical, mental and moral development. Children under 16 may only be employed after a thorough medical examination which concludes that they can safely do the proposed work without any danger for their health and normal physical and mental development. Employment of minors under 18 for hard or harmful jobs is prohibited by the Labour Code.

200. The Labour Code provides for special treatment of employees under 18 by employers in terms of providing them with easier working conditions and proper qualification.

201. Parents may lose their parental rights in certain cases provided by law:

(a) When the behaviour of the parent threatens the development of the child's personality, proper education, health or property;

(b) When a parent neglects the child without any important reason or fails to provide support;

(c) When a parent has left a child at a child-care facility and has not claimed him or her back within one year of the end of the child's pre-agreed term of stay at the facility, i.e. when he has not demonstrated any interest in the child (art. 75 of the Family Code).

202. Regional courts are competent to rule on the restriction of parental rights. Such cases are opened ex officio, at the request of the other parent or the prosecutor.

203. Bulgaria is party to the Convention on the Rights of the Child. Bulgaria's first report on the implementation of its provisions will be submitted in 1993.

Article 25

204. Citizens are free to take part in the conduct of public affairs, either directly or through representatives freely elected by them. This right was significantly curtailed during the totalitarian regime but was fully restored in 1989 with the transition to political pluralism.

205. Universal, equal and direct suffrage by secret ballot is a constitutional principle (art. 10 of the Constitution). The actual implementation of this right guarantees the free expression of the will of the electorate. The elections for the Grand National Assembly in 1990, the general elections for parliament, municipal councillors and mayors in 1991, and the direct presidential elections in 1992 were monitored by foreign observers, who concluded that they were fair and free and reflected the political will of the nation.

206. No restrictions exist on the access to government posts. In this connection, by ruling No.8 of 1992 the Constitutional Court of the Republic of Bulgaria overturned a paragraph of the concluding and transitional provisions of the Banks and Credits Act which banned for a period of five years the employment in bank executive positions of persons who in the last 15 years had been elected to superior bodies of the Bulgarian Communist Party and other organizations linked to it, or have been agents or employees of the State Security Service. This paragraph was held to be unconstitutional and to violate certain international instruments to which Bulgaria is party.

Article 26

207. The principle of equality before the law has been applied consistently in Bulgarian legislation. It is specified in article 6 of the Constitution and is implemented in the laws and decrees governing the various spheres of public life and providing equal protection for all citizens. No restrictions of a legal nature exist. Differences of race, sex, language, religion, political or other persuasion, national or social origin and property status do not play any role whatsoever in the State's attitude to individuals or social groups.

208. The equality of rights and obligations, as well as equality in resolving financial and other issues, also exists between spouses. Neither of the spouses enjoys any privileges by law.

Article 27

209. Different ethnic, religious and linguistic groups exist in Bulgaria, such as Turks, Gypsies, Armenians, Jews, Muslims, Pomaks etc. Each of these groups is free to establish its own public, cultural and religious organizations and institutions, to maintain its own cultural life, to profess its religion and to use its mother tongue.

210. The members of each of these groups enjoy the same civil and political rights as those of all other Bulgarian citizens. There is equality in terms of rights and treatment. The economic and political opportunities of all members of these groups are equal. The persons belonging to the above groups have access to all, including the highest, State and public offices. There are, for instance, numerous members of parliament originating from the Turkish ethnic group as well as several persons of Jewish origin.

211. Persons belonging to ethnic groups are not only free to use their mother tongue but may also study it as a subject at Bulgarian schools. A special decree of the Council of Ministers has instructed the Ministry of Education and Science to issue textbooks in the languages of the ethnic groups and to organize training for teachers in those languages.

212. During the time of the totalitarian regime, after 1984 certain restrictions were placed on the ethnic Turks, including curtailment of the right to use their own names, to study their mother tongue, to conduct their religious rites etc. This naturally caused discontent and a mass exodus to Turkey. These restrictions have now been lifted completely.